

STATE OF NEW YORK

DIVISION OF TAX APPEALS

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In the Matter of the Petitions	:	
of	:	
ATN MARTS, INC.	:	DETERMINATION
AND 24 OTHER PROCEEDINGS	:	
	:	
for Review of a Denial, Suspension, Cancellation	:	
or Revocation of a License, Permit or	:	
Registration under Article 20-A of the Tax Law.	:	

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Petitioners filed petitions for review of a denial, suspension, cancellation or revocation of a license, permit or registration under Article 20-A of the Tax Law. (See Appendix I.)

An expedited hearing was held before Jean Corigliano, Administrative Law Judge, at the offices of the Division of Tax Appeals, W. A. Harriman State Office Campus, Albany, New York, on November 17, 1988 at 2:30 P.M., with all briefs to be filed by February 3, 1989. Petitioners appeared by Hodgson, Russ, Andrews, Woods & Goodyear (Paul R. Comeau, Esq., Anthony L. Dutton, Esq., and Paul I. Perlman, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Patricia L. Brumbaugh, Esq., and C. Roger Jenkins, Esq., of counsel).

ISSUE

Whether the refusal of the Commissioner of Taxation and Finance to register petitioners as chain stores was authorized by article 20-A of the Tax Law.

FINDINGS OF FACT

At hearing, petitioners and the Division of Taxation stipulated to seven facts and to the introduction into evidence of certain documents. The stipulated facts have been incorporated into this determination as Findings of Fact "1" through "7".

1. Chain stores which have been registered by the Department of Taxation and Finance are permitted by law to purchase cigarettes from wholesale dealers at the chain store price, which is less than the price otherwise paid by retailers.

2. With the exception of Convenience Corner and Pine Valley Busy Mart, petitioners<sup>1</sup> are

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<sup>1</sup>Petitioners are identified in Appendix I.

members of Target Cooperative Buying Association, Inc. ("Target"), a New York corporation, incorporated on February 2, 1988, pursuant to article 2 of the New York Cooperative Corporations Law.

3. Target has filed its certificate of incorporation with the Secretary of State and has filed both its certificate of incorporation and bylaws with the Department of Agriculture and Markets, as required by section 15 of the Cooperative Corporations Law.

4. Target's certificate of incorporation and bylaws, in form, conform to the requirements of sections 11 and 16 of the Cooperative Corporations Law.

5. Target's corporate purposes, as listed in the certificate of incorporation, are permitted purposes under subdivision 2 of section 11 of the Cooperative Corporations Law.

6. Petitioners sell cigarettes at retail through 15 or more separate establishments in New York State.

7. Each petitioner, with the exception of Convenience Corner, Pine Valley Busy Mart, Kerr's Pick Quick Food Mart, Mike's Quick Stop and Rosati IGA Market, submitted an application for a certificate of registration as a chain store pursuant to article 20-A of the Tax Law.

On or about March 29, 1988, the [Division of Taxation] of the State of New York Department of Taxation and Finance mailed to each petitioner a Notice of Proposed Refusal to Register as a Chain Store, on the ground that "[Target] does not qualify under the Cigarette Marketing Standards Act."

On or about September 8, 1988, the [Division of Taxation] mailed to each petitioner a revised notice of proposed refusal to register as a chain store, and each such notice stated that the refusal was based on the [Division's] conclusion that: "The purposes of [Target] are not within section 13 of Cooperative Corporations Law."

8. Each application at issue here indicated that the applicant met the statutory definition of a "chain store" by virtue of being a cooperative member, and attached to each application was a Target membership certificate. Each applicant listed Tripifoods, Inc. as a major supplier of its cigarettes.

9. Tripifoods is a cigarette wholesale dealer and a regional wholesale supplier of groceries and other consumer items to retail establishments.

10. Upon receipt of the first of the applications at issue, the Division of Taxation ("Division") attempted to verify that Target was registered with the Department of Agriculture and Markets, as required by the Cooperative Corporations Law. While awaiting the result of this inquiry, the Division

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received several telephone calls from members of the cigarette industry, claiming that Target did not qualify as a cooperative under article 20-A of the Tax Law. Shortly thereafter, the Division determined that Target was incorporated under the Cooperative Corporations Law and registered with the Department of Agriculture and Markets. The Division then requested, and received, copies of Target's certificate of incorporation, bylaws and membership agreement.

11. Target's certificate of incorporation states its purposes as follows:

"The corporation is formed under and pursuant to the provisions of Article 2 of the Cooperative Corporations Law, and its objects and purposes are such as are authorized for general cooperative corporations under such Law, to wit:

"To assist its members, or any of them, by performing services connected with the purchasing, financing, producing, manufacturing, warehousing, preserving, processing, packing, grading, storing, handling, shipping, marketing, merchandising or selling of the agricultural and food products of its members or any by-products thereof, or connected with the acquisition for its members of labor, supplies and articles of common use."

Target's incorporators are shown as Anthony L. Dutton, Pamela D. Heilman, Terry C. Burton, Bonnie A. Redder and Michael A. O. de Freitas. Each incorporator's address is shown as 1800 One M & T Plaza, Buffalo, New York. None of the incorporators are members of Target.

The names of Target's directors are shown as Robert E. Hilburger, G. Ronald Dixon, R. Sterling Cole, Joan A. Foster and Anthony D. Rano. Each director's address is shown as 1427 William Street, Buffalo, New York.

12. Robert E. Hilburger and G. Ronald Dixon are officers of Tripifoods; Tripifoods' business location is 1427 William Street, Buffalo, New York.

13. Target's bylaws contain the following provisions:

(a) Membership in Target is restricted to individuals, partnerships, corporations and other business entities "which are engaged in the retail grocery store business".

(b) Target's board of directors is granted the right to terminate, upon 30 days' notice, a member's membership in Target for any reason or no reason.

(c) Each member is entitled at every meeting to one vote on all matters appropriate for consideration by the membership, and each member may authorize another person or persons to vote by proxy.

(d) The affairs of Target are to be managed by the board of directors.

(e) Each of the directors must be a member of Target or an officer of a partnership, corporation or other business entity which is a Target member.

(f) Any member may bring charges against a director by filing them in writing with the Secretary of Target, together with a petition for removal signed by 5% of the membership. A director may be removed by "the affirmative vote of three-fourths of the members voting thereon at a meeting promptly held after due notice in writing setting forth the purpose for which such meeting is called, provided that at such meeting not less than 10% of the entire membership vote, personally or by mail."

(g) Any director may be removed for cause by a majority vote of the entire board.

(h) Vacancies occurring on the board of directors may be filled by a vote of a majority of the directors then in office, even where no quorum exists, or by vote of the members at any meeting where members have been put on notice of the proposed election. Unless elected by the members, a director elected to fill a vacancy shall serve until the next meeting of members at which the election of directors is in the regular order of business.

(i) Target's board of directors may appoint a three-member Executive Committee from among its members, and such committee shall have all authority of the board of directors in the interim between meetings of the board of directors.

(j) Target's board of directors may annually appoint or elect a president, one or more vice presidents, a secretary or treasurer. The president and vice president must be members of Target or a representative of a member and shall be appointed from among the directors. The president of the board shall be the chief executive officer of Target.

14. Target's initial membership application and agreement contained these provisions:

"2. Effective upon the acceptance of the Applicant's membership in the Cooperative, the Applicant appoints the Cooperative as the agent of the Applicant, and the Cooperative accepts such appointment, for the purpose of procuring and purchasing for the Applicant certain merchandise, products and other commodities as are necessary or useful in the conduct of the Applicant's business. No purchase shall be made by the Cooperative for or on behalf of the Applicant pursuant to the foregoing agency relationship unless the Applicant makes a specific request. The Applicant is solely responsible to make payment in full, directly to the seller for such merchandise, products and other commodities.

3. The Applicant understands that Tripifoods, Inc. has agreed to provide management of the Cooperative at no cost to its members, other than reimbursement of reasonable expenses incurred in providing such management. In consideration of such service, the Applicant hereby agrees to execute the proxy attached hereto and made a part hereof, intending that this Agreement be construed as a voting agreement for purposes of section 620(a) of the New York Business Corporation Law."

15. The proxy referred to in the second quoted paragraph is an irrevocable proxy. It states, in pertinent part:

"On any vote for the election of directors of Target Cooperative Buying Assn., Inc. (the 'Cooperative'), the undersigned hereby constitutes and appoints the President or any Vice President of Tripifoods, Inc. as the true attorney, agent and proxy of the undersigned to vote at any meeting of the members of the Cooperative as follows: (a) on any vote for the election of the Board of Directors of the Cooperative, for five individuals nominated by Tripifoods, Inc. or its successor or assignee, (b) on any vote for the removal of any director of the Cooperative, as directed by Tripifoods, Inc. or its successors or assignee, and (c) on any vote to fill a vacancy on the board of directors of the Cooperative arising from the death, inability to serve, resignation or removal of any director, for a person nominated by Tripifoods, Inc. or its successor or assignee."

16. The first meeting of Target's board of directors was held on February 6, 1988. The board unanimously adopted the following resolution:

"Resolved, that the proposed Membership Application and Agreement and Irrevocable Proxy presented to this meeting be, and it hereby is, approved and adopted as the form of membership agreement to be entered into between the corporation and Tripifoods, Inc. and each of the proposed members of the corporation."

17. By letter dated March 25, 1988, the Division advised Target's lawyers that "notwithstanding certain facial indicia of cooperative corporation status", the Division's review of Target's bylaws, membership application and irrevocable proxy indicated "that Target will not operate as a cooperative corporation as defined by section 3(c) of the Cooperative Corporations Law, and therefore, its members may not register as 'chain stores' by reason of their membership in Target." The Division's determination that Target would not operate as a cooperative corporation was based primarily on its conclusion that Target's board of directors would be completely controlled by Tripifoods which would thereby be able to operate Target for its own economic self-interest, rather than for the benefit of Target's members.

18. The Division issued notices of proposed refusal to register as a chain store to all Target members who had submitted applications, but despite this, discussions continued between the Division and Target's attorneys, regarding the Division's decision.

19. In response to the concerns stated in the Division's March 25th letter, Target revised its membership application and agreement by eliminating paragraph three of the application and with it the requirement that all members execute an irrevocable proxy in favor of Tripifoods. Each Target member executed a notice of termination cancelling its existing membership application and agreement and irrevocable proxy statement. Each then executed the new membership application and agreement.

20. Revised Target membership applications and agreements were forwarded to the Division for all petitioners except Convenience Corner and Pine Valley Busy Market.

21. The Division issued revised notices of proposed refusal to register as a chain store, dated September 8, 1988, to all petitioners from whom it had received the revised Target membership application and agreement. The notice stated:

"Notwithstanding your Notice of Termination and subsequent new membership application and agreement with Target Cooperative Buying Association (the 'cooperative'), the purposes of the cooperative are not within section 13 of the Cooperative Corporation Law."

22. The impetus for Target's formation came from retail stores seeking to take advantage of the chain store provision of article 20-A of the Tax Law. One of these businesses is petitioner MWS Enterprises, Inc., whose president, Mark Sidebottom, testified at hearing. Mr. Sidebottom and other retailers contacted Tripifoods to ask if a mechanism could be found that would allow them to qualify as chain stores under article 20-A. Tripifoods agreed to research their inquiries, and Target was the result.

23. Target was organized by Tripifoods which prepared Target's certificate of incorporation, bylaws and membership agreement, undertook all activities necessary to incorporate Target and provided administrative and support services to Target.

24. Target has a membership of approximately 70 and a membership goal of 200. Each member paid an initial fee of \$50.00 which was intended to fund the corporation. There is no evidence that any member was ever actively involved in Target's formation.

25. Target is not operational. It has no business office, business telephone or other property. There has never been a membership meeting. Target has made no purchases, and its members have made no purchases through it. Mr. Sidebottom stated that it is not operational because the members are awaiting the outcome of their efforts to register as chain stores.

26. Target was formed solely for the purpose of enabling its members to register as chain stores under article 20-A of the Tax Law.

## CONCLUSIONS OF LAW

A. Article 20-A of the Tax Law, commonly referred to as the Cigarette Standards Marketing Act (CSMA), was adopted by the Legislature in 1985 (L 1985, ch 897, eff September 1, 1985). CSMA established minimum percentage markups to be used by wholesale dealers and retailers in determining the minimum price of cigarettes (Tax Law § 483) and made it illegal for wholesale dealers and retailers to sell cigarettes in New York at less than the minimum price (Tax Law § 484[a]). The "basic cost of cigarettes", to which the wholesale dealer's markup was to be applied, was defined as "the invoice cost of cigarettes to the

wholesale dealer, or the replacement cost of cigarettes to the wholesale dealer, in the quantity last purchased, whichever is lower," with certain other adjustments (Tax Law § 483[a][1]).

CSMA treated chain stores as wholesale dealers for purposes of their purchases of cigarettes from wholesale dealers and as retail dealers for purposes of their sales of cigarettes to consumers (Tax Law § 483[a][2], [4] [L 1985, ch 897]). Thus, retail dealers qualifying as chain stores enjoyed a competitive advantage over retailers who did not so qualify. A chain store was defined in chapter 897 as:

"any person or persons who owns or maintains fifteen or more retail outlets, having one hundred percent common ownership, who services such outlets by the maintenance of an established place of business for the purchase of cigarettes, including, but not limited to, the maintenance of warehousing facilities for the storage and distribution of cigarettes" (Tax Law § 483[a][3]).

From its onset, CSMA was subjected to criticism from smaller retailers and subjobbers who complained that the chain store provision unfairly favored large retail chains over other retailers (Letter from Roderick G. W. Chu, Commissioner of Taxation and Finance, to the Honorable Mario M. Cuomo [July 17, 1987], Governor's Bill Jacket, L 1987, ch 860). Chapter 860 of the laws of 1987 attempted to address the perceived inequities of CSMA, in part, by "allowing more retailers to qualify as 'chain stores'" (Governor's Memorandum of Approval of Chapter 860 of the Laws of 1987 [December 23, 1987], Governor's Bill Jacket, supra). Tax Law § 483(a)(3), as amended by Chapter 860, defines a chain store as:

"any person or persons who owns or maintains fifteen or more retail outlets in New York state, having one hundred percent common ownership, through which cigarettes are sold at retail. Vending machine operators who sell cigarettes at not less than fifteen separate outlets shall be considered to be chain stores. It shall also include cooperative members, franchisees and large volume outlets."

Tax Law § 483(a)(5) states:

"'Cooperative member' shall mean any member of a 'cooperative' as defined in subdivision (c) of section three of the cooperative corporations law, whose members sell cigarettes at retail through fifteen or more separate establishments in New York state."

All chain stores, including individual cooperative members, are required to register with the Commissioner and to provide such information as the Commissioner by regulation or instruction may require (Tax Law § 489). To the extent that they can be made applicable, the licensing provisions of Tax Law § 480 shall be applicable to the registration of chain stores (Tax Law § 489).

B. Petitioners take the position that the Commissioner is without authority to refuse to register Target members on the ground that Target is not a cooperative as defined by the Cooperative Corporations Law. They argue that the



Commissioner has neither the statutory authority nor the institutional competence to interpret the Cooperative Corporations Law. In petitioners' view, the Division was required to halt its investigation and register Target members when it determined that Target met the preliminary formal requirements of the Cooperative Corporations Law. Petitioners maintain alternatively that there is no basis for the Commissioner's determination that Target is not a cooperative as defined in the Cooperative Corporations Law.

C. First, it must be determined whether the Commissioner exceeded his jurisdiction by refusing to register petitioners on the basis of his interpretation of the Cooperative Corporations Law.

Generally, an administrative agency may rule on legal matters arising in the course of its regulatory duties (Burke v. New York State Public Service Commission, 47 AD2d 91, aff'd 61 NY2d 393). In the exercise of his duty to register chain stores, the Commissioner was required to determine whether petitioners fulfilled the statutory definition of a chain store, and this in turn necessitated an inquiry into whether Target was a cooperative as defined by CSMA. Petitioners argue that the mere fact that Target filed with the Secretary of State and Department of Agriculture and Markets a certificate of incorporation and bylaws which facially conform to the Cooperative Corporations Law satisfied the CSMA definition of a cooperative, and the Commissioner was without authority to further investigate Target's operation. I do not agree.

CSMA defines a cooperative member as one belonging to a cooperative "as defined in subdivision (c) of section three of the cooperative corporations law" (Tax Law § 483[a][5]). Thus, it was incumbent upon the Commissioner to determine whether Target met the section 3(c) definition, and this task required some interpretation of the Cooperative Corporations Law as well as scrutiny of Target's certificate of incorporation, bylaws and any other information relevant to Target's status as a cooperative. In arriving at this conclusion, it is noted that no evidentiary presumptions attach to the proper filing of a facially sufficient certificate of incorporation and bylaws.

Section 5 of the Cooperative Corporations Law provides that the Business Corporation Law applies to every corporation formed under the former statute, except those sections of the Business Corporation Law which are specifically held not to apply. One of the provisions of the Business Corporation Law explicitly excepted is section 403 (Cooperative Corporations Law § 5[1][b]). Section 403 of the Business Corporation Law states:

"Upon the filing of the certificate of incorporation by the department of state, the corporate existence shall begin, and such certificate shall be conclusive evidence that all conditions precedent have been fulfilled and that the corporation has been formed under this chapter, except in an action or special proceeding brought by the attorney-general."

Section 15 of the Cooperative Corporations Law, providing for the filing of a certificate of incorporation as a cooperative corporation with the Secretary of State and Department of Agriculture and Markets, does not contain a similar presumption that all conditions precedent have been met. Therefore, the

Commissioner could not rely on Target's filing of facially sufficient certificates of incorporation as conclusive evidence that it fulfilled the definition of a cooperative corporation found in section 3(c).

It is concluded that the Commissioner was authorized by CSMA to scrutinize Target's certificate of incorporation, bylaws, membership agreement and any other relevant documents to ascertain whether Target is a cooperative as defined by the Cooperative Corporations Law and to interpret any sections of that law relevant to his inquiry.

D. The first ground for the Commissioner's refusal to register petitioners is the Division's contention that Target was organized for a purpose not authorized by the Cooperative Corporations Law. The general purposes for which a cooperative may be formed are found in section 13 of the Cooperative Corporations Law. The Division of Taxation contends that under section 13 a cooperative may not be formed for the purpose of purchasing goods for resale to the public. This contention is not supported by the legislative history of the Cooperative Corporations Law or the explicit language of CSMA.

The Cooperative Corporations Law was added by chapter 712 of the Laws of 1951, which simultaneously repealed an earlier version of the law enacted by chapter 231 of the Laws of 1926. The earlier law classified cooperative corporations into five types, including a producers' and consumers' cooperative stock corporation (Cooperative Corporations Law § 2 [L 1926, ch 231]). Section 86 of the statute provided that such a corporation might be created for the purpose of conducting a merchandising business on the cooperative plan (Cooperative Corporations Law § 86 [L 1926, ch 231, amended L 1938, ch 383]).

The existing Cooperative Corporations Law classifies cooperative corporations as either stock or nonstock and eliminates the five classifications by type. Consistent with this change, chapter 712 of the Laws of 1951 repealed section 86 which applied specifically to producers' and consumers' cooperatives, stock corporations and credit corporations. The purposes for which a cooperative corporation may be formed are now found exclusively in section 13 and apply generally to all cooperatives. Section 13 provides:

"A cooperative corporation may be created under this chapter primarily for mutual help, not conducted for profit, for the purposes of assisting its members...by performing [various] services connected with...the agricultural and food products of its members...or connected with the acquisition for its members of labor, supplies and articles of common use...to be used or consumed by the members...."  
(Emphasis added.)

It is the Division's position that in enacting chapter 712 of the 1951 laws the Legislature intended to preclude consumer cooperatives from operating a merchandising business on a cooperative basis, and that under current law cooperative members may acquire products only for their own use and the use of their families and guests and not for resale to nonmembers.

There is no legal authority supporting or contradicting the Division's position; however, a review of the legislative history indicates that the

Legislature did not intend to bar consumer cooperatives from organizing under the Cooperative Corporations Law.

In a memorandum in support of chapter 712 of the Laws of 1951, the State Agriculture Commission stated that the revision of the Cooperative Corporations Law was guided by three principles:

"1. To develop a simplified, much abbreviated and consolidated statute by telescoping and sprawling, [sic] poorly coordinated and over-detailed provisions of the present law.

"2. To follow the analogy of other general laws as to business, by giving broad general powers to the organizers and members to conduct their affairs according to such administrative and contractual regulations as they may choose to adopt in the certificate of incorporation and in the by-laws.

"3. To accomplish these ends without any major substantive changes in the present law." (1951 NY Legis Ann, at 111.)

Several other commentators expressed the opinion that chapter 712 was not intended to revise the purposes for which a cooperative corporation might be organized (see     , e.g., Memorandum of NY Law Rev Commn., Governor's Bill Jacket, at 5, L 1951, ch 712). The conspicuous absence of consumer cooperatives was noted by the Attorney General, among others, who speculated that their omission resulted from the original plan of eliminating all special articles for special purposes (Memorandum to the Governor, Governor's Bill Jacket, supra, at 19). No commentator believed the omission of references to consumer cooperatives was intended to preclude them from organizing under the newly enacted Cooperative Corporations Law. This history indicates that pursuant to section 13 of the Cooperative Corporations Law a cooperative may be formed for the same purposes as those allowed under prior law, including the purchasing of merchandise for the use and consumption of its own members and for resale to members of the public. This construction of section 13 is consistent with CSMA which defines a cooperative, in pertinent part, as one "whose members sell cigarettes at retail through fifteen or more separate establishments in New York State" (Tax Law § 483[a][5]).

E. As a second ground for the Commissioner's refusal to register, the Division contends that Target was not formed "for the cooperative rendering of mutual help to its members", but for the economic advantage of Tripifoods. As proof of its contention, the Division points to Tripifoods' domination of Target, primarily through the presence of Tripifoods' officers and employees on Target's board of directors; Target's own lack of activity (as an indication that Target is merely a shell corporation); Target's membership's lack of participation in Target's affairs; and the original membership agreement and irrevocable proxy, giving Tripifoods virtually total control of Target.

Petitioners maintain that the existing board of directors will serve only until Target holds its first annual membership meeting, and, in compliance with Target's own bylaws and the Cooperative Corporations Law, the membership will then elect a board from among its own members. They contend that such a

procedure fully complies with the Cooperative Corporations Law and renders irrelevant the Division's objection to Tripifoods' officers' serving on Target's board of directors. It is petitioners' position that Tripifoods' control of Target is precluded by the Cooperative Corporations Law and by Target's own certificate of incorporation, bylaws and revised membership agreement; and therefore, there are no factual or legal grounds for the Division's conclusion that Tripifoods controls Target.

Although Tripifoods' involvement in Target is relevant to this inquiry, undue emphasis on Tripifoods' motivations and its level of participation in Target deflects attention from the primary issue: Whether Target was organized "for the cooperative rendering of mutual help and service to its members" (Cooperative Corporations Law § 3[c]).

It has been established that Target's certificate of incorporation and bylaws substantially comply with the Cooperative Corporations Law. Therefore, before addressing the substantive issue, it must first be decided whether the Commissioner and the Division of Tax Appeals may look beyond these documents in determining whether Target is a cooperative as that term is defined by the Cooperative Corporations Law. For the reasons discussed in Conclusion of Law "C", it is concluded that we may.

The Division has charged that Target was not formed "for the cooperative rendering of mutual help and service to its members" (Cooperative Corporations Law § 3[c]). Therefore, it must next be asked, for what purpose was Target organized? The evidence establishes that Target was formed for the sole purpose of enabling its members to register as chain stores under CSMA. Mr. Sidebottom testified that he and others contacted Tripifoods to ask if a mechanism could be found by which Tripifoods' customers could register and purchase cigarettes as chain stores. Tripifoods undertook the task of discovering such a mechanism, and Target was the result. In short, CSMA was the sole impetus for Target's formation, and any benefits to be gained by the cooperative action of Target's members were incidental to the membership's primary purpose. Target's membership has had no meetings, and it has not been actively involved in Target's formation. At present, Target is not operational; it has no offices, employees, storage facilities, business telephone, delivery vehicles or plans to acquire the same. In short, Target has engaged in no activities unrelated to registering its members as chain stores. Mr. Sidebottom testified that Target is nonoperational because its membership is awaiting the outcome of these proceedings, implying that if Target members are not allowed to register as chain stores, Target will not operate in any capacity. Tripifoods' active involvement in Target, its domination of the present board of directors and the original membership agreement with its irrevocable proxy in favor of Tripifoods are further evidence that Target's membership has no interest in the corporation except as a vehicle to enable it to purchase cigarettes at a lower price.

Since it has been concluded that Target was formed solely for the purpose of enabling its membership to take advantage of the chain store provisions of CSMA, it must next be determined whether a corporation formed for such a purpose is a cooperative within the meaning of the Cooperative Corporations Law and CSMA. A cooperative is an organization operated not for its own profit or that of its investors, "but to provide service and means whereby its members

may have the economic advantage of cooperative action" (Cooperative Corporations Law § 3[d]). There is no doubt that each Target member stands to gain an economic advantage from its membership, if it is thereby allowed to register as a chain store. However, the hallmark of a cooperative is not so much economic advantage as it is "cooperative action". A cooperative formed for the purpose of qualifying its members as chain stores is not formed "for the cooperative rendering of mutual help and service to its members" (Cooperative Corporations Law § 3[c]), but to take advantage of CSMA. It is concluded, therefore, that a corporation formed solely to take advantage of the chain store provisions of CSMA is not a cooperative as defined by section 3(c) of the Cooperative Corporations Law.

F. The petitions of ATN Marts, Inc., and 24 other petitions, are denied, and notices of refusal to register may be issued to petitioners immediately.

DATED: Albany, New York  
March 2, 1989

/s/ Jean

Corigliano \_\_\_\_\_  
ADMINISTRATIVE LAW JUDGE



APPENDIX I

Petitioner's <u>Name</u>	File <u>No.</u>
ATN Marts, Inc.	806214
Convenience Corner*	806215
Dandy Mini Marts, Inc.	806216
Fuzaks Better Meats, Inc.	806217
Glider Oil Co., Inc.	806218
Guetti's Market, Inc.	806219
Chautauqua Food & Fuel, Inc.	806220
Country Convenience Food Stores, Inc.	806221
E.H.J. & K. Sales, Inc.	806222
Genesee Farms, Inc.	806223
Green Bros. Petroleum, Inc.	
GB's Country Corners	806224
Investing Associates, Inc.	806225
Joe's Country Convenience Stores, Inc.	806226
Pine Valley Busy Mart*	806227
Schmitt Sales, Inc.	806228
Telefood Delivery, Inc.	806229
Crafts & Creations, Inc.	
d/b/a Kenyon's Variety	806230
L & S Grocery	806231
Mahl Bros. Oil Co., Inc.	806232
MWS Enterprises, Inc.	806233
Kerr's Pick Quick Food Mart of Geneva, NY, Inc.*	806234
Lynam's Sunshine Superette	806235
Mike's Quick Stop*	806236
Rosati IGA Market*	806237
Scottal, Ltd.	
d/b/a The Country Convenience Food Store	806238

\* Petitioners have not submitted applications for a certificate of registration as a chain store.

